Office-Supreme Court, U.S.

In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 291.

CECIL DUNLAP and SAM POLLOCK,
Petitioners,

v.

THEODORE SPILKA,
Trustee in Bankruptcy,
Respondent.

RESPONDENT'S REPLY BRIEF.

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RESPONDENT'S REPLY BRIEF.

QUESTION PRESENTED.

Before entering upon the constitutional arguments of the Petitioners, the Respondent takes objection to the wording of the questions presented at the top of page 2 of the Petition. The question should read as follows:

When, during the course of a violent strike carried out jointly by two unions, a state court, to protect the peace and security of the citizens of the community, specifically forbids certain acts to be continued in the future by the presidents of both unions (Petitioners herein) and specifically orders such presidents to do certain acts, and, upon it being determined that such officers have deliberately disobeyed such orders of such court with the result that further violence has occurred and the peace and security of the community has been violated and the state court finds the officers to be in contempt, and imposes fines upon them, have the rights of such officers under Section 1, of the 14th Amendment of our Constitution been in any way violated?

The questions presented by the Petitioners are worded so as to create an inference that the Petitioners were found guilty of contempt because of the conduct of the pickets on the picket line, which conduct violated the Court's order; when in fact, as will be set forth hereafter, the record is clear that acts of commission and omission by the Petitioners brought about the finding of guilty of contempt against them.

Petitioners ask for a Writ of Certiorari on the claim that their rights under Section 1 of the 14th Amendment of the Constitution have been violated by the ruling in the contempt proceedings in the Court of Common Pleas of Cuyahoga County, Ohio. Respondent denies that such violation exists and denies that the finding in the trial court presents any constitutional issue for this Court's consideration.

STATEMENT OF THE CASE.

At the inception of the events involved herein, there existed in Cleveland, Ohio, a small independent so-called Super-Market at 8115 Euclid Avenue. While the business was in the form of a corporation, Euclid Foods Inc., all of its shares were owned by Mrs. Elizabeth Bondi, who, together with her husband and a few clerks, operated the store. All employees were members of either the Retail Store Employees Union Local 880, AFL-CIO or Amalgamated Meat Cutters and Butcher Workmen of North America Local 427, AFL-CIO. On March 1, 1956 both unions, of which Petitioners are, and were, the respective presidents, began a so-called "strike" that was to last for thirteen months and which ended with the bankruptcy of Euclid Foods, Inc.

Because of the extreme violence that attended this "strike," Euclid Foods filed an action against both unions.

The cause is No. 681,664 of the Court of Common Pleas of Cuyahoga County, Ohio, and the petition asked for a temporary restraining order, injunction and equitable relief. Upon hearing, the Court granted a temporary restraining order which is set forth as Appendix A herein.

Subsequently, Euclid Foods Inc. filed Amended Supplemental Charges in Contempt against the unions and the Petitioners based upon an alleged violation of the temporary restraining order. The trial on these issues lasted 23 days, during which time the Court received the testimony of some 50 witnesses and examined a large number of exhibits, including depositions and photographs. At the conclusion of this trial the Court rendered its decision on December 2, 1956 which is set forth as Appendix C in the Petition.

The Petitioners appealed this decision to the Court of Appeals for the Eighth Judicial District of Ohio, which affirmed the judgment of the Court of Common Pleas.

The Petitioners then appealed to the Ohio Supreme Court, which dismissed the appeal as of right for the reason that no debatable constitutional question is involved. These decisions are set forth in Appendices A and B of the Petition.

ARGUMENT.

It is necessary, at this point, to review the contents of the restraining order of the Common Pleas Court. The attention of this Court is directed to Item 4, of the Common Pleas Court's order, in which the Court identifies the picketing area, and permits certain numbers of pickets to be stationed at certain locations. Immediately following the quoted paragraph found on page 3 of the Petition, which is a part of Item No. 4 of the Court's temporary injunction, there appears a significant paragraph: "However, neither of these two defendants (Petitioners herein) named shall picket."

Because of the violence which accompanied the picketing from the out-set in this case, the Common Pleas Court, in making its order, put the burden upon the officers of the Union to make sure that this violence did not continue. This was the reason for making Pollock and Dunlap responsible for "such" picketing; and this was the reason for absolutely enjoining Pollock and Dunlap from taking any active part in the picket line. In fact, the very presence of a leader on the picket line, under the circumstances involved in this case, was conducive to giving the other pickets courage to carry on their violent conduct.

The Petitioners' major argument seems to be that the Court of Common Pleas' restraining order is vague and indefinite and that it follows a pattern of injunctions across the country, reported and unreported, which is hectic; and that this Court should certify this case as a vehicle for reviewing State standards and labor injunction cases.

It is important to analyze the wording of this order. Pollock and Dunlap were given the *right* and *privilege* to visit the pickets. The order established that Pollock and

Dunlap, as union leaders, have the right and privilege to visit the pickets on the picket line. The Court uses the words "there stationed," to indicate that the right and privilege were limited to the specific locations where the Court permitted pickets to be stationed. Pollock and Dunlap cannot argue that they did not know, or were not apprised of the right and privilege they had to visit the pickets at the picket post. The Court has spelled this out for them. But, if the Petitioners had the right and privilege to visit the pickets at their station, they also had corresponding duties to perform. These duties are spelled out in the Court's order as follows: "* * * and shall supervise and be responsible for *such picketing.*" The Lower Court tells the Petitioners that this supervision and responsibility is confined to "*such picketing.*" Obviously, the Court is referring to the picketing which it permitted in items 3 and 4 of its Journal Entry. (Emphasis added.)

The Court's order could not be more clear. Furthermore, there is nothing in the entire record of this case to indicate that these Petitioners ever requested the Court of Common Pleas to clarify or explain any part of its order. Certainly, if the Petitioners had always felt that such orders were unclear or vague (as they now claim) they could and should have asked for such clarification. But Pollock and Dunlap have failed to do this, and they have failed to do anything to indicate that they were uncertain in any degree as to the exact meaning of such orders.

The meaning of "to be responsible for" and "supervise" are of such common knowledge as to require no further definition. The Petitioners argue that no one can say with exactitude what "supervise" means in relation to a picket line as used by the State Court in this proceeding. The word is clear and must be read with reference to the entire order of this Court.

The folly of Petitioners' position is that they have come into this Court with unclean hands, having engaged in violent conduct, having induced others to participate in it actively, and having participated in it themselves; and argue that this Court should certify this case because it points up a State Court injunctive abuse, in holding Union officers responsible for picket line conduct they are powerless to control; and holding Union officials under pain of punitive sanctions, under decrees so vague as to be almost meaningless.

The Common Pleas Court never found Pollock and Dunlap guilty of contempt of Court because a "wayward" picket became embroiled in a fight with a picket-line antagonist, or because of the conduct of the pickets, over which they had no control.

Specification No. 26 charges that Pollock and Dunlap "failed and refused to supervise said pickets so as to require them to conform to the order of this Court." In other words, Pollock and Dunlap were charged with failing and refusing to make sure that the pickets picketed according to the order laid down by the lower Court. This is simple and clear.

The Petition sets forth on page 18, Sec. 6 of the Norris-La Guardia Act, 41 Stat. 71, 29 U. S. C. Sec. 106:

> "No officer or member of any association, or organization and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any Court of the United States for the unlawful act of individual officers, members, or agents, *except upon clear proof of actual participation in, or actual authorization of, such acts, or a ratification of such acts after actual knowledge thereof.*" (Emphasis added.)

Indeed, it seems as if the Norris-La Guardia Act as cited above were written with this case in mind.

Specification No. 16 of the Amended and Supplemental Charges charged Sam Pollock with picketing the plaintiff's premises and carrying a picket sign on certain specific occasions. The Court of Common Pleas found that Sam Pollock had violated its order and that he did picket, as set forth in that specification.

Testimony received at the time of trial clearly proves that Pollock in fact, carried a picket sign and participated in the picketing. Nick Bondi, the store manager, testified (R. 779) that Pollock was taking pictures of the customers coming out of the store. He stated (R. 780): "One day he took a picture of a customer getting into their car." Bondi also testified, "He told them they shouldn't cross the picket line. When people cross picket lines, they take a chance of losing their own employment * * *." (R. 780.) Pollock was 3 or 4 feet away from Nick Bondi when Pollock said this to the customer. (R. 797.) Nick Bondi identified, from a photograph marked plaintiff's Exhibit 32, Sam Pollock, who was shown carrying a picket sign on Sunday, August 5, 1956. Bondi testified that Pollock was standing out front, walking back and forth, talking to the people who were walking by. (R. 798.)

On (R. 812), Bondi testified about a conversation he had with Pollock at the E. 81st St. entrance to the parking lot of the Euclid Foods Market. Bondi complained about signs being torn, and he states that Pollock replied, "There will be more than that torn. You are lucky you don't get your damn neck or back broke." On (R. 687), Mrs. Elizabeth Bondi, who was the President of the employer, testified that plaintiff's Exhibit 30 was a photograph of Pollock lifting a picket sign he was wearing to avoid being photographed. Mrs. Bondi said she took him by surprise, that he didn't want to be photographed wearing a picket sign, and that is why he picked up the sign.

There can be no doubt that the charge against Pollock under Specification No. 16 was proved clearly and convincingly to the Common Pleas Court. Pollock was found guilty under Specification No. 16. Petitioners have not included that specification to be reviewed in this petition, however.

The Petitioners on page 22 of their petition, cite *Youngdahl v. Rainfair, Inc.*, 355 U. S. 131 (1957) and *San Diego Building Trades Council v. Garmon*, 359 U. S. 236 (1959) for the proposition that State Courts have jurisdiction to enjoin picket line conduct which amounts to violence and a breach of the peace, where the dispute affects inter-state commerce, under the State's police-power. The order of the Common Pleas Court in this case follows that rule. Violence was prevalent in this case. Indeed, it was the violent conduct of the pickets and the threat to personal safety of customers, employees and management which led the Court of Common Pleas to restrain the Unions from in any way, *except by peaceful means*, utterances, writings and persuasion from interfering with the ingress and egress of any person to or from the plaintiff's store. And also from assaulting or abusing with vile or indecent language or threatening with physical violence, any of plaintiff's customers; to induce, or attempt to induce said customers not to enter plaintiff's store. (Emphasis added.) It is difficult to understand petitioners argument on page 22 of its Petition, which suggest that the restraining order in this case was so broadly drawn or so rigidly enforced as to act as a restraint upon peaceful picketing.

In *United Construction Workers et al. vs. La Burnum Construction Corp.*, 347 U. S. 656 (1954), this Court held:

> "To the extent that Congress prescribed preventative procedure against unfair labor practices, conflicting

> state procedure to the same end is excluded. But, to the extent that Congress has not prescribed procedure, for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that *existing criminal penalties*, or liability for tortious conduct has been eliminated * * *. The denial of jurisdiction to the State Court in this case would mean that where the Federal Preventative Administrative procedures are impotent or inadequate, the offenders by coercion of the type found here, may destroy property without liability for damages." (Emphasis added.)

State Courts have the right to enjoin conduct that endangers the peace and security of the citizens of the community. State Courts have the further right to grant temporary injunctions and permanent injunctions against threatened future conduct that would irreparably damage a plaintiff, and against which resulting injuries plaintiff would have no adequate remedy at law.

The fact that injunctions granted in labor cases are unreported does not affect the right of a state to secure the peace and security of its citizens against unrestrained violence by unions, nor does such fact impair a citizen's right to injunctive relief against such unions.

The fact that such injunctive decrees remain part of unreported cases means only that some defendant-unions have not seen fit to appeal the decision granting the injunction, nothing more.

The Petition cites *Wisconsin Board v. United Auto Workers,* 36 L. R. R. M. 2556 Wis. Cir. Ct. 1955, a contempt proceeding growing out of the Kohler strike, in which the Court stated that: "If labor leaders are to be found guilty of contempt of court merely because some member of the Union (sic) violates a Court's injunction, the ultimate result would be that decent law-abiding men

would refuse to accept positions of leadership in labor unions and that the leadership of American Labor would soon fall into the hands of irresponsible opportunists." 36 L. R. R. M. 2559. Once again the petitioners have attempted to lead this Court into believing that they were found guilty of contempt because some member of their union violated the Court's injunction.

The Ohio Supreme Court in the case of *State of Ohio v. Local Union 576, United Steelworkers of America et al.*, 172 O. S. 75, at page 85, uses the following language:

> "The responsibility of union officials also has been well stated, as follows, by the Court of Appeals of California:
>
> '* * * The duly constituted officers and committees of the union, clothed with general authority to conduct the strike * * * cannot in good conscience, with knowledge of the restraining order and its provisions and early advice thereon by their attorney, withhold from the members, particularly those assigned to picket duty, adequate information concerning acts enjoined by the restraining order. Those members were not acting merely on their own. They were acting for the union as an organization and would quite naturally *look to their captains for guidance* as well as for station assignments.' " (Emphasis added.)
>
> *Oil Workers International Union v. Superior Court of Contra Costa County*, 103 Cal. App. 2d 512, 570, 571; 230 P. 2d, 71.

On page 84 of *State of Ohio v. Local Union 576, United Steelworkers of America, et al.* (*supra*) the Court citing *United States v. United Mine Workers of America*, 330 U. S. 258; and *United States v. Brotherhood of Railroad Trainmen*, 95 F. Supp., 1019 states:

> "The interest of orderly government demand that respect and compliance be given to the orders issued by Courts possessed of jurisdiction over subject matter and over litigants. One who defies public authority, be that one an unincorporated association of laboring men, or an individual, or a corporation, and who willfully disobeys a court order must pay the penalty."

The petitioners were found guilty because of their own failure to supervise and their own failure to be responsible for the picketing, Pollock by many acts of commission, and Dunlap, by acts of omission. Dunlap was aware of the Court's order, he knew of the violence accompanying the picketing, which resulted in this Court's order, and he failed to supervise the pickets' activities so as to make them conform to peaceful picketing.

Petitioners argue at great length the "overriding social implications" of injunctions in labor cases; they have used this tactic consistently throughout the history of this case as an excuse for their failure to argue the case on its merits. The question that Petitioners attempt to raise here is whether or not *their* constitutional rights have been violated; they are not really interested in anything else, including the possible effect of injunction on the penurious labor unions in any of the 50 states, including Hawaii.

CONCLUSION.

For the reasons set forth herein the Petition should be denied.

Respectfully submitted,

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APPENDIX A.

Journal Entry of the Court of Common Pleas.

No. 681,664.

IN THE COURT OF COMMON PLEAS

STATE OF OHIO, COUNTY OF CUYAHOGA, SS.

EUCLID FOODS, INC.,

Plaintiff,

vs.

RETAIL FOOD CLERKS LOCAL 880,
RETAIL CLERKS INTERNATIONAL ASSOCIATION,
AFL-CIO

Defendants.

JOURNAL ENTRY.

March 26, 1956.

This cause came on to be heard for an order pendente lite in accordance with Plaintiff's petition. Upon the evidence offered by all parties and the argument of counsel, the Court being fully advised in the premises finds that an order pendente lite should issue.

Wherefore, it is ordered, adjudged and decreed that the defendants and each of them, their agents, employees, the members of the Unions herein involved, and all other persons to whom knowledge of this order shall come, be and until further order of this Court are restrained as follows:

1. From in any way, except by peaceful means, utterances, writings and persuasion, interfering with the ingress and egress of any person to or from Plaintiff's store.

2. From assaulting or abusing with vile or indecent language or threatening with physical violence any of Plaintiff's customers to induce, or attempt to induce said customers not to enter Plaintiff's store.

3. From causing or permitting pickets to enter upon Plaintiff's property either in front of its store or upon its parking lot.

4. Except as later specifically permitted in this paragraph, from engaging in picketing, stationing pickets, entering or gathering upon the sidewalk upon the northerly side of Euclid Avenue between East 82nd Street and East 81st Street or upon the easterly sidewalk of East 81st Street between Euclid Avenue and the northerly side of the entrance to Plaintiff's parking lot. However, upon the northerly portion of said sidewalk on Euclid Avenue for a distance of forty-eight (48) feet, which is in front of Plaintiff's store, two (2) pickets may be stationed. Also two (2) pickets may be stationed upon the easterly sidewalk of East 81st Street between Euclid Avenue and the northerly side of the entrance to said parking lot, and one (1) picket may be stationed on the sidewalk at either side of the Euclid Avenue entrance to said parking lot who shall picket only there.

The defendants Sam Pollock and Cecil Dunlap shall have the right and privilege to visit the pickets there stationed and shall supervise and be responsible for such picketing.

However, neither of these two defendants named shall picket.

Neither of the two groups of pickets permitted above shall walk abreast upon the sidewalks nor otherwise impede any person desiring to use the sidewalks.

Each of said five (5) pickets shall wear or carry a picket sign.

5. From advising, protecting, aiding, abetting or assisting any person or persons in the commission of the acts hereby restrained.

Bond for this order pendente lite is fixed at $1,000.00 which has been executed, filed and approved.

To all of the above the Defendants except.

PARKER FULTON,

Judge.